The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte David R. Barstow and Daniel W. Barstow

Appeal 2006-3383
Application 09/548,719
Technology Center 2100

Decided: March 2, 2007

Before KENNETH W. HAIRSTON, JOSEPH L. DIXON, and HOWARD B. BLANKENSHIP, *Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-16, which are all of the claims pending in this application.

We REVERSE.

BACKGROUND

Appellants' invention relates to a method and apparatus for broadcasting live events to another location and producing a computer simulation of the live events at that location. In particular, the present invention utilizes computer simulation techniques to characterize the actions of a live event and broadcasts those computer characterizations to viewers who desire such information. The event is then simulated by the viewer's computer, utilizing the computer simulation characterizations of the actions of the event and known simulation techniques (Specification, 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

> 1. A method of transmitting information useful in a computer simulation of a live event, the live event being governed by a set of rules and comprising a sequence of discrete sub-events wherein said set of rules determines a status change in the live event from an occurrence of one of the discrete sub-events, the computer simulation operating in accordance with the set of rules, the method comprising:
>
> representing at least one of the sub-events by at least one action type selected from a set of action types representative of actions involving physical exertion and skill;
>
> creating a database file corresponding to the event;

updating the database file using the action type representing the at least one sub-event, wherein the updated database file provides an updated representation of the event; and

transmitting information from the updated representation of the event.

PRIOR ART

The prior art references of record relied upon by the Examiner in rejecting the appealed claims are:

Hughes	US 4,918,603	Apr. 1, 1990
McCarthy	US 4,894,774	Jan. 16, 1990

REJECTIONS

Claims 1-16 remain rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy in view of Hughes.

The rejection under non-statutory double patenting has been withdrawn by the Examiner (Answer 3).

Rather than reiterate the conflicting viewpoints advanced by the Examiner and the Appellants regarding the above-noted rejection, we make reference to the Examiner's Answer (mailed Nov. 2, 2005) for the reasoning in support of the rejection, and to Appellants' Brief (filed Jun. 16, 2003) and Reply Brief (filed Oct. 27, 2003) for the arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to Appellants' Specification and claims, to the applied prior art references, and to the respective positions articulated by Appellants and the Examiner. As a consequence of our review, we make the determinations that follow.

Appellants argue that McCarthy does not teach "representing at least one of the sub-events by at least one action type selected from a set of action types representative of actions involving physical exertion and skill" as recited in independent claim 1. Appellants additionally argue that Hughes does not pertain to the simulation of a live event and only implements a "Fantasy Football" league (Br. 8). Appellants further contend that the Examiner does not provide sufficient motivation for the combination (Br. 9).

We agree with the Appellants' above contentions, and we find no clear and convincing statement of a sufficient motivation to combine the disparate teachings of McCarthy and Hughes. After our review of the teachings of Hughes, we find no clear teaching that Hughes pertains to the simulation or simulated re-creation of a live event, but rather we find Hughes uses statistical data to "play" a new and different game from the underlying prior live event(s). We find that Hughes creates a new event or game using statistical data from prior live events. Furthermore, we find insufficient motivation to combine these teachings of Hughes with the teachings of McCarthy regarding the virtual video game.

We find that the Examiner is basing the combination upon impermissible hindsight reconstruction, in addition to lacking the above claimed elements.

We find these deficiencies to evidence a lack of a prima facie case of obviousness of the invention recited in independent claims 1, 5, 9, and 13. Therefore, we cannot sustain the Examiner's rejection of claims 1-16.

CONCLUSION

To summarize, we have not sustained the rejection of claims 1-16 under 35 U.S.C. § 103(a).

REVERSED

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KENYON & KENYON LLP
1500 K STREET N.W.
SUITE 700
WASHINGTON DC 20005